

REMARKS

Claims 1-3 and 6-10 are pending in the present application. Claim 10 has been added herein.

I. FORMAL MATTERS

A. Objection to the Specification

The Office Action indicates that the spacing of the specification filed on July 20, 2000 is unacceptable. In response to this objection, Applicant submits herewith a substitute specification that is double-spaced.

B. Objection to the Drawings

Applicant notes with appreciation the Examiner's indication that Applicant's remarks presented in the Response filed on March 8, 2004 overcame the objection to the drawings presented in the previous office action dated November 7, 2003.

II. PRIOR ART REJECTIONS

Claims 1-3 and 6-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski, et al. (U.S. Patent 5,914,748) in view of Autry, et al. (U.S. Patent 5,809,161). This rejection is traversed.

In the previous office action dated November 7, 2003, the Examiner rejected claims 1-3 and 6-9 under 35 U.S.C. §§ 102(e)/103(a) in view of Parulski alone. The Examiner, now apparently recognizing that Parulski does not teach some of the elements of the claimed invention, combines Parulski with Autry.

The Examiner now asserts that Parulski discloses an image pickup apparatus that takes a first image including only a background when a first period of time is measured, and a second image including the object when a second period of time is measured. The Examiner admits that Parulski fails to disclose updating the background image when a prescribed time period is elapsed. The Examiner relies on column 9, line 16 – column 11, line 55 of Autry for the teaching of this feature and asserts that it would have been obvious to include this feature of Autry in Parulski to correctly identify the subject in a slowly changing environment.

This rejection is traversed. Applicant submits that it would not have been obvious to combine the teachings of Autry in the manner asserted by the Examiner. Specifically, Applicant submits that it would not have been obvious to modify Autry to include a background updating feature because Parulski explicitly teaches away from this modification (see MPEP § 2145 X.D.2.). Parulski explicitly teaches to keep the background the same for the first and second images. Specifically, at column 3, lines 8 - 19, Parulski teaches:

The algorithm works best when the camera focus and exposure setting for the second exposure **are the same** as for the first exposure. This condition **minimizes the difference of the image background between the two exposures**. Although it is possible to have a different exposure setting for the second exposure and compensate for it, knowing the camera and system calibration, **the procedure is simplified by keeping the exposure setting for the second exposure the same as the first**. If the camera focus or exposure setting is not maintained, the change needs to be compensated before applying the following processing.

(Emphasis added).

Therefore, because Parulski teaches away from the combination asserted by the Examiner, Applicant submits that such a combination would not be obvious. Thus, Applicant submits that the rejection of claims 1-3 and 6-9 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Also, Applicant submits that neither Parulski nor Autry teaches or suggests to update the background of a first image using the background image of a second image, as recited in claim 1.

Parulski is silent on picking up a moving image. This reference appears to consider picking up two still images, as Fig. 1 shows an image including an

object and a background is initially picked up and an image of the background alone is then picked up.

In contrast, in the claimed invention, an image including an object and a background may be a moving image. An embodiment of the present invention assumes that an image of a background alone is a still image and an image including an object is a moving image, and modifying the claimed invention by Parulski, as presented above, would result in inconvenience if an image including an object and a background is picked up earlier than an image of the background alone. Possible convenience would, for example, include that a length of a moving image that can be picked up is limited to no more than T_2 based on a previously set time ($T_1 + T_2$) and that if a user does not desire to previously set a length of a moving image, T_2 cannot previously be set.

The present invention can advantageously pick up an image of a background alone earlier than an image including an object and the background to allow the image including the object and the background to be a moving image of a desired length. As recited in claim 1, an image picked up earlier is allowed to be one of the first and second images. This is because if an image including an object and a background is a still image, which of an image of a background alone and that including the object and the background is first picked up would not provide a significant difference to their respective contents. If an image including an object and a background is a moving image, then an

image of the background alone needs to be picked up earlier than the moving image.

Autry discloses a technique employed to pick up a moving image. However, this reference only considers that an object is framed out. Autry does not consider actively picking up an image of a background alone, as described in the subject application. While Autry may describe that an image once stored to framestore 71a and 71b (see Fig. 10) is periodically updated, Autry fails to describe a timing of storage of an initial image. A difference between Autry and the present invention results from the fact that Autry is directed to the monitoring of a road. In Autry, allowing a camera to continue to pick up an image would provide an image of the background alone. In contrast, in the present invention, applied to picking up an image of a person or the like, failing to actively pick up an image would provide no image of a background alone.

Thus, the feature of the present invention wherein an image of a background alone is initially picked up and subsequently, when a predetermined period of time elapses, a moving image including an object and the background is picked up, is not taught or suggested by the applied prior art.

Therefore, claims 1-3 and 6-9 would not have been obvious over Parulski in view of Autry. Thus, the rejection of claims 1-3 and 6-9 under 35 U.S.C. § 102(e) should be withdrawn.

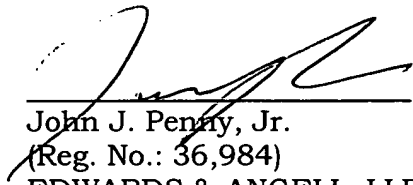
Further, Applicant has added new independent claim 10, which recites that the first image including only the background is taken after the first period of time, and the second image including the background and object is taken after the second period of time. Applicant submits that Parulski teaches the opposite of this. Specifically, Parulski teaches that the first image that is taken includes the object and background and the second image includes only the background (see column 2, line 65 – column 3, line 8; and column 5, lines 1-5). Autry fails to make up for this deficiency of Parulski. Therefore, because the combination of Parulski and Autry does not form the invention defined by new claim 10, claim 10 would not have been obvious under 35 U.S.C. § 103(a) over Parulski in view of Autry.

Based on the foregoing, Applicant submits that the present application is in condition for allowance and allowance is respectfully solicited. If the Examiner believes that any of the outstanding issues could be resolved by a telephone conference, Applicant respectfully requests the Examiner to contact the undersigned at the telephone number listed below.

Applicant believes that no additional fees are due for the subject application. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105.

Respectfully Submitted,

Date: September 7, 2004
Customer No.: 21874



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